of it, the court will not listen to him; but, if he has any good reason, then he can come and ask that it should not be made an order of the court, and that it be set aside."

In that case, the plaintiff's husband was killed in an accident whilst employed by the defendants. A settlement of the claim of the widow was arranged, subject to the approval of the court, before any action was begun. A summons for approval of the settlement was taken out. The plaintiff later re-married. The settlement was then approved by the court without knowledge of the re-marriage. Before the order was drawn up and perfected the plaintiff told her solicitors of her re-marriage; they told the defendants' solicitors, and the order was set aside because it was made under a misapprehension induced by an innocent misrepresentation.

Mr. Morris Edgar, on behalf of the defendant, relied on *Little* v. *Spreadbury* (8) which lays down the principle that if a client by his conduct induces his solicitor to believe that he is authorized to make a certain compromise in an action which the solicitor is conducting on behalf of the client, and the solicitor, reasonably relying on that conduct and believing that he has the authority of the client, makes the compromise, the client is bound whether he intended to give that authority or not and whether he in fact understood or did not understand the terms of the compromise (*per* Bray J. on page 664). The head-note of that case reads:

"Before a county court action was tried a settlement was arrived at between the solicitors for the respective parties and a memorandum embodying its terms was signed by the solicitors. This memorandum was not read by the defendant, but it was read over to her by her solicitor or his son, and she seemed to assent to its terms. The action was thereupon, by consent of the county court judge and the solicitors on both sides, struck out. Although the defendant seemed to assent to the terms of the compromise she did not in fact understand them and did not mean to assent to them. Subsequently an agreement in writing, signed by the solicitors for both parties, containing the terms of the memorandum was sent to the defendant, who repudiated it upon the ground that the terms of the compromise which she authorized her solicitor to effect were not contained either in the memorandum or in the written agreement. It was held that the defendant was bound by the compromise made by her solicitor and was liable in damages for the breach of it."

The distinction between these two lines of authority is well pointed out by Bray J. in the above case. After dealing with the facts in *Neale* v. *Gordon-Lennox, supra,* the learned judge went on to distinguish that case from the case before him, and on page 663 he said:

"In the present case we have only to consider the question which ordinarily arises upon any contract that is signed by an agent, namely, whether that agent had authority to bind the principle."

To my mind, the distinction between these two lines of authority is this. In one, a consent order not drawn up and perfected can be set aside if it appears, and I emphasize the word "appears", that the consent was given under a misapprehension or from a misstatement or want of materials; it is immaterial whether the misapprehension etc. is in respect of a particular matter which forms part of the settlement or whether it is as to counsel's authority. In the other, the only question to be asked is whether the act of counsel is within the scope of his ostensible authority. The real question to be decided in the present case is whether, a consent order never having been drawn up, the facts bring the case within the principle of *Holt* v. *Jesse, Neale* v. *Gordon-Lennox,* and *Dietz* v. *Lenning Chemicals Ltd.* In my opinion the answer is in the affirmative. Here there was an arrangement between the parties to settle the case in the form of paragraph 5 of counsel's affidavit. The order had not been drawn up, it was not perfected. The applicant seeks to set aside the consent order on the ground that counsel had acted under a misapprehension. On reading the two affidavits, it is difficult to avoid the conclusion that there might have been some misapprehension on the part of counsel as to some particular matters which form part of the basis of the settlement. I therefore order the case to be restored to the hearing list. Costs thrown away to defendant in any event.

Order accordingly.

Solicitors: *Heng, Chen & Co.; Morris Edgar & Co.*

JIM THIAN SIONG & ANOR. v. RANDHIR SINGH

[F.C. (Wee Chong Jin C.J. (Singapore), Tan Ah Tah F.J. and Ambrose J.) October 11, 1966]

[Singapore — Federal Court Civil Appeal No. Y31 of 1966]

Practice and Procedure — Judgment in default of appearance — Application to set aside — Application granted on payment of amount claimed into court — Whether condition reasonable.

The respondent had obtained judgment in default of appearance on a claim in respect of a moneylending transaction against the appellants. The appellants applied to have the default judgment set aside and for leave to defend. In support an affidavit was filed which disclosed a *prima facie* defence to the action. The learned judge who heard the application allowed it on condition that the amount claimed in the action should be paid into court. The appellants appealed against that part of the order imposing this condition.

Held: it was clear on the facts and in the particular circumstances of this case that if the condition imposed were allowed to stand, the appellants would be unable to comply with it and would be prevented from defending the action and therefore in the circumstances, the appellants should be allowed to defend on condition of payment of all costs thrown away as a result of their failure to enter appearance.

CIVIL APPEAL.

K. K. Bezboruah for the appellants.

R. Murugason for the respondent.

Wee Chong Jin C.J. (delivering oral judgment): The respondent commenced an action in January this year against the appellants. It is a claim in respect of a money lending transaction. The appellants though served did not enter any appearance and about four months later judgment in default of appearance was entered against both appellants for the sum claimed. Subsequently execution was levied and following on this process, the appellants took out an application which was heard by Buttrose J. to set aside the default judgment and asking for leave to defend the action. In support of that application an affidavit was filed which discloses, in our opinion, a *prima facie* defence to the action commenced by the moneylender against the defendants. Buttrose J. allowed the application in that he gave leave to defend the action but upon condition that the amount claimed in the action should be paid into court within 21 days from the date of the hearing of the application. It is against that part of the order of Buttrose J. imposing a condition that the appellants now appeal.

It seems to us quite clear on the facts and in the particular circumstances of this case that if the condition imposed on the appellants be allowed to stand, that condition would amount to a denial of justice in that the defendants, the appellants in this appeal, would be unable to comply with it and therefore would be prevented from defending the action. That being so, it seems to us that we should vary the order made. We think that the appellants would be sufficiently penalised for their failure to enter an appearance after being served, by imposing a term that they must pay all the costs thrown away as a result of their failure to enter an appearance. We accordingly would vary the order of Buttrose J. by setting aside that part of his order which requires the defendants to pay the amount claimed into court within 21 days from the date of the hearing of the application and substitute therefor an order that the defendant be at liberty to defend this action on payment of all costs thrown away including the costs of his application in the court below.

As regards the costs of this appeal, we think, exercising our discretion as to costs, the successful appellants should have half the costs of this appeal.

Our order will be that judgment be set aside and the defendants be allowed liberty to defend. There will be a set off as to costs. The deposit is to be paid to the appellants or their solicitors and the defence is to be filed within 14 days.

Order accordingly.

Solicitors: *K. K. Bezboruah; Murugason & Co.*